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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 1st July 2013

No. 6011—li-1(B)-18/2007-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd May 2013 in I. D. Case No. 39 of 2007 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Indian Farmers Fertilisers Co-operative Ltd. (IFFCO), Paradeep and their Workman Shri Pradipta Kumar Sahoo was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 39 OF 2007

Dated the 22nd May 2013

Present :

S. A. K. Z. Ahamed,
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

1. The Management of .. First Party—Managements
M/s Indian Farmers Fertilisers
Co-operative Ltd. (IFFCO),
Paradeep.
2. The Chairman-cum-Managing Director,
M/s OSWAL Chemical & Fertiliser Ltd.,
At 7th Floor, Antrikshya Bhawan,
22-Kasturba, Gandhi Marg,
New Delhi-110 001.

And

Their Workman,
Shri Pradipta Kumar Sahoo

.. Second Party—Workman

Appearances :

Shri S. K. Patnaik	.. For Management No. 1
Shri S. K. Patnaik	.. For Management No. 2
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Shri P. K. Sahoo	.. For the Second Party—Workman himself

AWARD

The Government of Odisha in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Court for adjudication vide their Order No. 9601—li-1(B)-18/2007-LE., dated the 13th August 2007 :—

“Whether the action of the management of M/s Indian Farmers Fertilisers Co-operative Ltd. (IFFCO), Paradeep in terminating the services of Shri Pradipta Kumar Sahoo, Technician Trainee (Electrical) by way of refusal of employment with effect from the 10th October 2005 is legal and/or justified ? If not, what relief Shri Sahoo is entitled to ?”

2. The case of the second party workman, in brief, as set out in his statement of claim is that he joined as Technician Trainee (Electrical) under the management No. 2 on 8-2-2005 vide appointment letter, dated the 25th January 2005. During the course of employment, he suffered from Viral Hepatitis for which he remained on leave from 2-7-2005 to 6-9-2005 and thereafter he joined in the service on 7-9-2005 and worked up to 10-10-2005, but the wages for the above period was not paid to him. So, when the workman demanded his salary, the management No. 2 turned a deaf ear and terminated his service by way of refusal of employment with effect from the 10th October 2005. According to the workman, the establishment of the management No. 2 was handed over to the management No. 1 with effect from the 1st October 2005 and had not recommended his name for employment under the management No. 1. So the workman wanted to approach the Executive Director of management No. 1, but the security personnels did not allow him to enter inside the factory premises. On these averments, the second party workman has prayed for his reinstatement in service with full back wages.

3. On the other hand, the management No. 1 appeared and filed written statement denying the plea of the workman. According to it, the second party workman was appointed under the management No. 2 as Technician Trainee (Electrical) on monthly stipend basis for a period of one year on 8-2-2005, but he was not successfully completed his training period and has not been appointed to work as a regular employee. Further plea of the management No. 1 is that the workman voluntarily left the training without any intimation with effect from the 2nd July 2005. So the workman has not completed 240 days as Trainee within one calendar year preceding the date of his alleged termination by way of refusal of employment. So the workman is not entitled to get any relief as

required under Section 25-F of the Industrial Dispute Act, 1947, rather he voluntarily abandoned his job. On these backgrounds, the management No. 2 has prayed to answer the reference against the second party workman.

4. The management No. 2 also appeared and filed written statement denying the claim of the second party workman. The management No. 2 has taken the same plea as stated by the management No. 1. The management No. 2 further stated that the second party workman has admitted to have worked as Trainee under the establishment of the management No. 2 from 8-2-2005 to June, 2005 i. e. only for 5 months which does not constitute one year of continuous service as per Section 25-B of the Industrial Disputes Act, 1947. Further it has been averred that the management No. 2 has offered to transferred assets of the Fertiliser Plant by sale to the management No. 1 for which a sale agreement has been executed between the management No. 2 and the management No. 1 and according to the said sale agreement the management No. 1 took over the Plant from 1st October 2005. The management No. 2 has given a list of 1292 regular employees which includes 874 workmen who have been absorbed under the management No. 1. As the second party workmen was not being employed under the management No. 2, at the time of transfer his name was not included in the list. On these backgrounds, the management No. 2 has prayed that the present workman is not entitled to get any relief as prayed for.

5. In view of the above pleadings of the parties, the following issues are settled :—

ISSUES

- (i) "Whether the action of the management of M/s Indian Farmers Fertilisers Co-operative Ltd. (IFFCO), Paradeep in terminating the services of Shri Pradipta Kumar Sahoo, Technician Trainee (Electrical) by way of refusal of employment with effect from the 10th October 2005 is legal and/or justified ?
- (ii) If not, what relief Shri Sahoo is entitled to ?"

6. In order to substantiate their pleas, the management No. 2 has examined its Senior Marketing Executive as M.W. 1 and proved the copy of appointment letter of the workman under the cover of Ext. 1. On the other hand, the workman as well as the management No. 1 have neither examined any witness nor proved any document in support of their respective cases.

FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for the sake of convenience

During the course of hearing, the management No. 2 in the affidavit evidence has reiterated the facts stated in its written statement. On perusal of Ext. 1, it shows that the second party workman was offered letter of appointment to the post of Technician Trainee (Electrical) and was directed to join not later than 10-2-2005 and accordingly the workman joined in the said post on 8-2-2005. The plea of the workman is that while he was working under the management No. 2, he suffered from Viral Hepatitis for which he remained on leave from 2-7-2005 to 6-9-2005 and thereafter he joined in his job on 7-9-2005 and worked till 10-10-2005. Further the plea of the workman is that his leave was duly sanctioned by the management No. 2 but the wages for the above period was not paid to him and when he demanded to pay his wages, the management No. 2 has illegally terminated his service by way of refusal of employment. To substantiate the above pleas, the workman has not

filed a single piece of paper to show that he had actually availed the medical leave and his leave was duly sanctioned by the management No. 2. The workman has also not proved any document to show that his joining report was accepted by the management No. 2. So the workman has miserably failed to establish the above pleas as taken. On the other hand, the plea of both the management are that the workman was working as Trainee from 8-2-2005 to 6-9-2005 and thereafter he voluntarily abandoned his job and did not turn up for his duty. The above plea of the management have remained unchallenged as the workman has not been cross-examined the M.W. 1 though sufficient opportunities were given to him. Therefore, the plea taken by the management cannot be disbelieved.

8. From the above score, it is clear that the workman has worked under the management as Technician Trainee (Electrical) from 8-2-2005 to 6-9-2005 which is near about 5 months only. Therefore, the workman has not completed 240 days of service in 12 calendar months preceding the date of alleged termination by way of refusal of employment. Therefore, the workman was not in continuous service under the management as required under Section 25-F of the Industrial Disputes Act. Since the second party workman has not completed the requisite period of service to constitute the continuous service, the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 is not at all attracted in the facts and circumstances of this case.

9. So, on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that the second party workman has miserably failed to establish that he had actually worked for 240 days and covered under Section 25-B of the Industrial Disputes Act, 1947 and also the mandatory provisions of Section 25-F of the Industrial Disputes Act is applicable to him. Therefore, the second party workman is not entitled to get any relief as prayed for. Both the issues are answered accordingly.

10. Hence Ordered :

That the action of the management of M/s Indian Farmers Fertilisers Co-operative Ltd. (IFFCO), Paradeep in terminating the services of Shri Pradipta Kumar Sahoo, Technician Trainee (Electrical) by way of refusal of employment with effect from the 10th October 2005 is legal and justified. The workman Shri Sahoo is not entitled to get any relief as prayed for.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
22-5-2013
Presiding Officer
Labour Court
Bhubaneswar

S. A. K. Z. AHAMED
22-5-2013
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor

J. DALANAYAK
Under-Secretary to Government